

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

MARK E. LOCKABY)	
Claimant)	
VS.)	
)	Docket No. 248,597
PRESSURE CAST PRODUCTS, INC.)	
Respondent)	
AND)	
)	
OHIO CASUALTY INSURANCE COMPANY)	
Insurance Carrier)	

ORDER

Respondent requested Appeals Board review of Administrative Law Judge Jon L. Frobish's May 15, 2000, Award. On August 30, 2000, the Appeals Board heard oral argument by telephone conference.

APPEARANCES

Claimant appeared by his attorney, William L. Phalen of Pittsburg, Kansas. The respondent and its insurance carrier appeared by their attorney, M. Doug Bell of Coffeyville, Kansas.

RECORD AND STIPULATIONS

The Appeals Board has considered the record and has adopted the stipulations listed in the Award.

ISSUES

On October 1, 1998, claimant injured his low back while working for the respondent. As a result of the low-back injury, claimant underwent a bilateral L4-L5 microhemilaminectomy, discectomy, medial facetectomy, and foraminotomy. Claimant was released to return to work with permanent work restrictions. But the respondent could not accommodate those restrictions. Based upon a 34.5 percent work task loss and a 28

percent wage loss, the Administrative Law Judge awarded claimant a 31.25 percent work disability.¹

On appeal, respondent contends claimant was untruthful when he testified at the March 1, 2000, regular hearing. Claimant testified he was employed as a security guard at that time when, in fact, the last day claimant worked as a security guard was February 17, 2000. The respondent argues that claimant is not credible and, therefore, his disability should be limited to permanent functional impairment, instead of the higher work disability.

Claimant, however, argues, that at the time he testified at the regular hearing, he still thought he was employed as a security guard. The claimant had been off work since February 17, 2000, because of a disagreement with his employer. He thought the employer would return him to work. The claimant agrees the reason he is no longer working for the security guard employer is for reasons not associated with his injuries. Therefore, claimant agrees the wages he was earning as a security guard in the amount of \$320 per week should be imputed to determine the wage loss component of the work disability test. But claimant disagrees that his permanent partial disability benefits should be limited to his functional impairment rating. Accordingly, claimant requests the Appeals Board to affirm the Administrative Law Judge's 31.25 percent work disability award.

The nature and extent of claimant's disability is the only issue for Appeals Board review.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record, considering the briefs, and hearing the parties' arguments, the Appeals Board makes the following findings and conclusions:

The Appeals Board finds the Administrative Law Judge's Award should be affirmed. The Appeals Board does so for the reasons stated in the Administrative Law Judge's findings and conclusions and adopts them as its own.

In particular, the Appeals Board agrees with the Administrative Law Judge's finding that the weekly wage, claimant was earning while employed as a security guard in the amount of \$320 per week, should be imputed to the claimant in computing the wage loss component of the work disability test. Although claimant had not worked since February 17, 2000, at the March 1, 2000, regular hearing, claimant thought he still was employed by the security guard employer when he testified. Later, he found out he no longer was employed for reasons not associated with his injuries.

Therefore, since claimant's termination was not the result of his work-related injuries, whether claimant was or was not employed at the time of the regular hearing does not make

¹See K.S.A. 1998 Supp. 44-510e.

a difference in computing claimant's wage loss because claimant was not earning 90 percent or more of his pre-injury average weekly wage.² Claimant, therefore, remains entitled to a work disability and the \$320 per week he earned while working as a security guard is the best evidence in the record to demonstrate claimant's post-injury ability to earn wages.³

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that Administrative Law Judge Jon L. Frobish's May 15, 2000, Award should be, and it is hereby, affirmed in all respects.

All authorized medical expenses are ordered paid by the respondent.

All remaining orders contained in the Award are approved and adopted by the Appeals Board.

IT IS SO ORDERED.

Dated this ____ day of September 2000.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: William L. Phalen, Pittsburg, KS
M. Doug Bell, Coffeyville, KS
Jon L. Frobish, Administrative Law Judge
Philip S. Harness, Director

²See K.S.A. 1998 Supp. 44-510e.

³See Copeland v. Johnson Group, Inc., 24 Kan. App. 2d 306, 944 P.2d 179 (1997).